

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KATHERINE MCNULTY,

Plaintiff,

vs.

CIV NO. 05-221 BB/ACT

SANDOVAL COUNTY and the
SANDOVAL COUNTY BOARD OF
COUNTY COMMISSIONERS,

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION ON DEFENDANTS' MOTION FOR
PERMISSION TO FILE FOURTH MOTION TO DISMISS**

THIS MATTER comes before the Court on an Order of Reference from the Presiding Judge. [Doc. No. 158]. The Presiding Judge has asked the Magistrate Judge to recommend an ultimate disposition of Defendants' Motion for permission to file a Fourth Motion to Dismiss outside the deadlines set forth in the Initial Pretrial Report. [Doc. No. 154]. Included in the Defendants' Motion was the basis for the dispositive motion they wished to file. The Court, having reviewed the pleadings and being well informed of the discovery dispute which would form the basis of the Defendants' Fourth Motion to Dismiss, recommends that the Motion be DENIED. The Court further recommends that Plaintiff be awarded her attorneys' fees that she incurred in responding to Defendants' Motion.

PROPOSED FINDINGS

1. The trial of this matter is set for May 1, 2006. A summary judgment motion is pending. The parties are still engaged, with the Court's permission, in some last minute discovery.

2. Civil management limitations and deadlines are imposed as a means of complying with the congressional mandate under the Civil Justice Reform Act, 28 U.S.C. §471 et seq. The Act is intended to give the Court control over litigation, minimize delay and to advance the ultimate disposition of litigation. Our district adopted a Civil Justice Expense and Delay Reduction Plan in January 1993 to implement the case management requirements of the Civil Justice Reform Act.

3. The judges in this district take the case management requirements seriously and actively manage cases to bring them to a timely resolution. The Court sets trial settings and pretrial deadlines so that the Court has sufficient time to rule upon pending dispositive motions and the parties have time to prepare for trial in light of the Court's rulings. The time for filing new dispositive motions based upon new arguments has passed.

4. The Court notes that the proposed Fourth Motion to Dismiss raises the argument, *again*, that the Plaintiff has deliberately misled the Defendants in the course of discovery and that as a result her case should be dismissed. This Court has reviewed very similar arguments in the past and has recommended that the case not be dismissed based upon similar allegations of misrepresentations.

5. The Court finds that the proposed Fourth Motion to Dismiss does not raise any new argument that would lead this Court to recommend a dismissal. The Court has previously found that Plaintiff did not intentionally interfere with the discovery process, did not deliberately attempt

to conceal information about her marriage counselor and did not try to mislead the Defendants regarding her mental health treatment.

6. This Motion does not raise any new or substantially different arguments from those arguments that have already been addressed by this Court and on which the Court has issued rulings against the Defendants. The Court further finds that the Plaintiff has had to incur unnecessary attorneys' fees in addressing these same arguments and in responding to this Motion. Therefore, the Court recommends that Plaintiff be awarded her attorneys' fees incurred in responding to this Motion.

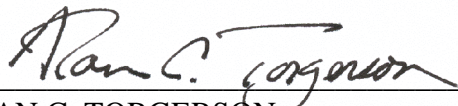
RECOMMENDED DISPOSITION

IT IS HEREBY RECOMMENDED that Defendants' Motion for permission to file a Fourth Motion to Dismiss outside the deadlines set forth in the Initial Pretrial Report be DENIED. It is further recommended that Plaintiff be awarded her attorneys' fees that she had to incur in responding to this Motion.

NOTIFICATION

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition, they may file written objections with the Clerk of the United States District Court, Pete V. Domenici United States Courthouse, 333 Lomas Blvd. NW, Albuquerque, NM 87102, pursuant to 28 U.S.C. §636 (b)(1). A party must file any objections within the ten (10) day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no

appellate review will be allowed.



ALAN C. TORGERSON
UNITED STATES MAGISTRATE JUDGE